

Tom O'Brien

Comments on:

413.1 Responsibilities of Owners, Managers, and Supervisory Professional Guardians

I respectfully suggest that this section be discarded.

Regarding the issue of responsibility for guardianship agency behavior, the question posed is, "Who is responsible for the professional work of a certified professional guardian agency?"

This question is more than adequately answered in existing rules, and the answer is: the Designated Certified Professional Guardians for the agency.

It is just that simple, and should remain that simple. There is no need for extensive verbiage describing the responsibility of the Designated CPGs, and such verbiage only serves to make something simple into something complicated, adding nothing to the bottom line of who is responsible. If a Designated CPG fails in some way to create clear lines of authority within the agency, this does not mitigate the CPGs responsibility.

The existing rules, which applicants for agency status must acknowledge in writing, are :

102.4 "Designated CPG" means the certified professional guardians working for an agency who have the final decision-making authority for incapacitated persons or their estate on behalf of the agency. The designated CPG is responsible for the actions of the agency(ies) for which they serve as designated CPG (Adopted 1-9-12

409.11 The responsibility to protect and preserve the guardianship estate rests with the guardian appointed by the court. When the guardian is an agency, this responsibility is that of the agency and the guardians identified with the Certified Professional Guardian Board as the responsible guardians for the agency. While it may be appropriate and necessary to retain and reasonably rely upon the services of knowledgeable individuals or entities to assist in the performance of duties, it is the responsibility of the guardian to provide appropriate oversight and review, in order to preserve the guardianship estate.

413.2 Responsibilities of a Subordinate Professional Guardian

This is a valuable addition to the rules, and will assist CPGs working for others to know their obligations. The use of the word "reasonable" is always problematic, but I have no alternative to offer.

In combination with the existing rules applied to Designated CPGs the rules present an elegant, clear and unambiguous understanding of the respective responsibilities: the Designated CPG is responsible for what employees do, and other CPG's do not have "I was only following orders" as a defense.

Proposed Regulation 413.4.1

The section refers to the sharing of fees and most likely makes good sense. However, the concept of a guardian sharing fees is not well established in the industry, and needs better definition. I am aware that this is a well understood term among attorneys, but candidly, I am not certain what it means, especially as applied to CPGs.

Proposed regulation 413.4.3

This rule bans guardianship agencies that are corporations may from having a non-CPG as "a director or officers" Many corporations, in particular not for profit corporations, have boards of directors that include experts in allied fields, for the same general reasons that the Certified Professional Guardian Board includes non-guardians. This practice should not be discontinued. The bottom line responsibilities of Designated CPGs is an effective guard against over-active boards.